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LATE QUARTERLY WAGE REPORTS

House Bill 4804 (Substitute H-3)
First Analysis (10-14-93)

Sponsor: Rep. Deborah Whyman
Committee: Labor

THE APPARENT PROBLEM:

The Michigan Employment Security Act requires employers to file with the Michigan Employment Security Commission (MESC) quarterly reports of wages and contributions due. Each employer's contribution rate (computed for purposes of paying the unemployment tax) is redetermined as of June 30 of each year; penalties are imposed for late or unfilled quarterly reports. Currently, the act provides that if an employer's quarterly reports have not been filed for the 12-month period preceding the computation date, the employer's "experience component" must be set so that his or her contribution rate for that year is not less than the highest experience component applicable to any employer for that particular calendar year, which means that the MESC essentially is required to impose on all employers who file late quarterly wage reports the same ten percent penalty. This provision is supposed to encourage employers to file their quarterly wage reports in a timely manner, and assumes the worst-case scenario if filings are late or not made at all. Some people argue that the current penalty provisions are unfair for those employers whose experience rate is low but who, for whatever reason, file their quarterly wage reports late. For instance, under the act currently an employer whose experience rate is only one percent (the minimum rate charged) due to a good employment record would have his or her penalty rate redetermined by the MESC at 10 percent for a late filing, which amounts to an actual rate 1,000 percent higher than the original experience rate. On the other hand, an employer whose experience rate was relatively high to begin with, say nine percent, due to a large number of layoffs would be charged a penalty for a late filing merely 100 percent higher than his or her original experience rate. Legislation has been introduced that would make the penalties for late filings of quarterly wage reports apply more equitably both to employers with high original experience component rates as well as those with lower beginning rates.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Employment Security Act to delete current provisions governing penalties imposed for quarterly wage reports filed late and replace them with new provisions. The bill specifies that when at least one, but fewer than all, of an employer's quarterly wage reports were filed late, his or her experience component would have to be set in accordance with another part of the act (which provides that the contribution rate for that calendar year would be not less than the rate calculated on wage reports filed by the employer for the 12-month period), and a penalty of three percent of employment wages paid to an individual, subject to the taxable wage limit, would be imposed on the employer. The Michigan Employment Security Commission would have to calculate the rate using information filed by the employer for the quarter or quarters reported. However, an employer who failed to file any wage reports for the 12-month period ending on June 30 of a year would be assigned the highest experience rate component applicable to the number of years of the employer's contribution liability, plus a three percent penalty.

The act currently permits an employer to have his or her contribution rate redetermined if he or she files the reports no later than 30 days after the date of mailing of the notice of determination of contribution rate. The bill would add to this following provisions governing the determination of contribution rates and penalties for late filings:

* An employer who filed all of the missing reports after the 30 days but not later than one year after the date when the determination of contribution rate and penalty was mailed would have to have his or her contribution rate redetermined (under the section that provides for different rates to be paid in certain cases), and would have to have his or her penalty redetermined to two percent. If the commission, however, found that the employer had "good cause" for filing the missing reports after the

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30-day period but within one year, it would have to set the employer's contribution rate as specified in the act and redetermine and remove the penalty.

* Notwithstanding a section in the act that governs the process of redeterminations made by the commission, if the employer filed all the missing reports after one year but within two years his or her contribution rate would be redetermined as specified in the act and his or her penalty would remain at three percent.

* If an employer filed all missing reports after two years his or her contribution rate would have to be redetermined in accordance with the act's provisions and his or her penalty would be four percent.

The commission could by rule prescribe good cause reasons for removing the penalty. A penalty paid by an employer pursuant to the bill's provisions would not be credited to the employer's experience account nor to the unemployment compensation fund, but would have to be credited to the interest and penalty account of the Michigan Employment Security Act Contingent Fund.

MCL 421.18

FISCAL IMPLICATIONS:

The Michigan Employment Security Commission says it expects the bill would result in a revenue loss to the Unemployment Trust Fund of between \$2 million and \$7 million annually; also, revenues from penalties imposed under the bill would go into the penalty and interest account of the contingent fund established under the act rather than into the trust fund. The actual amount of revenue loss would depend on the state's unemployment rate after the bill took effect. (The commission notes that money from the contingent fund penalty and interest account may only be used as appropriated by the legislature.) The commission, however, believes any revenue loss resulting under the bill will be more than offset by provisions within the Department of Labor's current fiscal year budget, which provide for the MESC to hire additional staff to perform tax audits and investigate fraud. The commission expects that these changes will generate between \$44 and \$53 million annually, all of which will be credited to the Unemployment Trust Fund. (10-13-93)

ARGUMENTS:

For:

Current provisions within the Michigan Employment Security Act related to penalties imposed by the MESC on employers who file late quarterly wage reports need to be revised to treat employers with different employment histories more equitably. The act currently requires the MESC to impose "the highest experience component" that applies to any employer for a particular calendar year. This means that an employer with a low experience rating is penalized much more harshly--in some cases, ten times worse--than one who already has a high experience rating if both should file quarterly reports after their due dates. Under the bill, all employers would be charged a flat three percent penalty for a late filing, except even this penalty would be revised downward or upward depending on how soon the reports were filed after their due date. Thus, under the bill the highest penalty an employer with, say, a one percent experience component rate could be charged for a late filing would be four percent higher, for a total of five percent. On the other hand, an employer who had the maximum experience component rate and who filed a late wage report could be imposed a penalty of up to 14 percent (ten plus four percent). In this way, all employers would still have an incentive to file the wage reports on time but would receive penalties that were more consistent with their actual employment history.

Against:

The bill would require the MESC to remove a penalty imposed on an employer who filed wage reports sometime between 30 days and one year after they were supposed to be filed with the commission if MESC found that the employer had "good cause" for filing them this late. Moreover, the bill would authorize the commission to prescribe by rule good cause reasons for removing the penalty. Thus, the commission would have authority to impose inconsistent penalties on employers based on rules which it could revise at any time. The bill should be amended to clarify what would be good cause reasons for which the commission could remove the penalty for wage reports that were filed by employers between 30 days and one year after they were due.

POSITIONS:

The Department of Labor supports the bill. (10-13-93)

The Michigan Employment Security Commission supports the bill. (10-13-93)